

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

WAFRA LEASING CORPORATION 1999-A-1,	)	
	)	
Plaintiff,	)	
	)	Case No. 01 C 4314
v.	)	
	)	
KPMG LLP,	)	Hon. Amy J. St. Eve
	)	
Defendant.	)	

**JURY INSTRUCTIONS**

—

### **The functions of the Court and the jury**

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

### **Parties are entitled to equal consideration**

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. A corporation and a partnership are entitled to the same fair consideration as a private individual. All persons, corporations, and partnerships stand equal before the law and are to be dealt with as equals in a court of justice.

## **The Evidence**

In determining the facts of this case, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, and the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

### **What is not evidence**

Certain things are not evidence. I will list them for you.

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports that you may have seen or heard.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

### **Definition of “direct” and “circumstantial” evidence**

Some of you may have heard the phrases “direct” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence. In other words, it is proof of one or more facts that point to the existence or non-existence of another fact. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

### **Common sense - Inferences**

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

## **Testimony of Witnesses**

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things: the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things that the witness testified about, the witness's memory; any interest, bias or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.



You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

### **Impeachment of Witness**

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’s testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

### **Attorney Interviewing Witness**

It is proper for an attorney to interview any witness for the purpose of learning what testimony the witness will give.

### **“Expert” Witness**

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness’s qualifications, and all of the other evidence in the case.

### **Note Taking**

Any notes you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not your notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

## **Burden of Proof**

In a civil lawsuit like this one, the burden is on the plaintiff to prove every essential element of his or her claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that the plaintiff’s claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof establishes each essential element of the plaintiff’s claim by a preponderance of the evidence, then you should find for the plaintiff as to that claim.

If the proof fails to establish any essential element of the plaintiff’s claim by a preponderance of the evidence, then you should find for the defendant as to that claim.

### **Claim**

Wafra asserts only one claim against KPMG. Wafra claims that Prime's independent auditor, KPMG, committed securities fraud by recklessly failing to correct its allegedly false audit opinion concerning Prime's 1997 financial statements. Wafra does not claim that KPMG committed securities fraud at the time it issued its audit opinion concerning Prime's 1997 financial statements in March 1998. Rather, Wafra claims that later, in late 1998 or early 1999, KPMG learned of information that required it to "correct" KPMG's audit opinion about Prime's 1997 financial statements. KPMG denies Wafra's claim that KPMG's audit opinion about Prime's 1997 financial statements was materially false or that it acted recklessly by not correcting its 1997 opinion before Wafra made its investment on May 4, 1999.

Wafra's claim against KPMG is based only on its 1997 audit opinion.

## **Auditors: Audit Engagement**

I will now instruct you concerning the professional standard for accountants.

Accountants are hired to audit the client's financial statements and to issue an opinion on them. The process is commonly called an engagement. The work done in accountants' engagement is guided by professional standards. The American Institute of Certified Public Accountants, or the AICPA, is an association of accounting professionals that establishes the professional standards for accountants. The plaintiff claims that KPMG violated the federal securities laws by failing to correct what it alleges to be false and misleading statements in their 1997 audit of Prime's financials.

When accountants are engaged to conduct an audit, they should do two things: first, they should examine the company's financial statements in accordance with Generally Accepted Auditing Standards, or GAAS; second, if they issue an opinion, then it should be on whether the company's financial statements fairly present the company's financial position, results of operations, and cash flows in conformity with Generally Accepted Accounting Principles, or GAAP, for the period of time covered by the financial statements at the time stated in the opinion. The accountants were engaged to perform an audit of Prime. Therefore, in these instructions, I will refer to them as "auditors." It is the auditors' duty to perform sufficient audit procedures based on GAAS to render an opinion on whether the statements are fairly presented in all material respects in conformity with GAAP.



### **Definition of “Financial Statement”**

Financial statements present a company's financial position at one moment in time, or the company's operating results and cash flows for a specified fiscal period. A company's financial statements cannot, and need not, provide all the information that is available about the company. That is not the function of the financial statements. A company's financial statements taken as a whole must disclose the information that is needed to fairly present the company's financial position, operating results, and cash flows.

## **Definition of GAAS**

Generally Accepted Auditing Standards, or GAAS, are established by the accounting profession through the American Institute of Certified Public Accountants (AICPA) as the general standards on an auditor's professional qualifications, the performance of an audit, and the issuance of an audit report. In performing an audit, auditors look to GAAS for guidance on the scope of duties and on the objectives of the audit. Auditors also look to GAAS to define the nature and scope of the audit procedures to be used.

GAAS requires the auditors to conduct an examination sufficient to allow them to form an opinion on whether the company's financial statements are fairly presented in all material respects in conformity with Generally Accepted Accounting Principles, commonly referred to as GAAP, which I will define for you next. GAAS also requires the auditor to identify those circumstances in which GAAP have not been consistently followed in preparing the financial statements.

Even when auditors conduct the examination conforming with GAAS, however, the auditors need not be convinced beyond doubt on all aspects of the financial statements. The auditors' examination in accordance with GAAS is intended to give a reasonable basis for the auditors' opinion on whether the financial statements have been fairly presented in conformity with GAAP.

### **Definition of GAAP**

Generally Accepted Accounting Principles, or GAAP, are guidelines for how a company's financial statements fairly present its operating results, cash flows, and financial position for the period covered by the financial statements. GAAP are derived and determined from a wide variety of conventions, rules, and experience. GAAP incorporate the consensus among accountants on how economic resources and obligations should be measured, which information should be disclosed in financial statements, and how the information should be disclosed to present the company's financial position fairly.

### **Sufficient Competent Evidence**

Auditors obtain and evaluate information about the contents of the company's financial statements. The auditors are required by GAAS to obtain sufficient evidence and information to have a reasonable basis for forming an opinion on whether the company's financial statements are fairly presented, in all material respects, in conformity with GAAP.

### **Duty to Correct**

Wafra asserts that, because KPMG believed that its audit opinion on Prime's 1997 financial statements was true at the time it was made in March 1998, KPMG did not commit securities fraud at the time when the 1997 financial statements were issued, in March 1998.

### **Summary of Claim**

There can be no securities fraud under the duty to correct theory unless and until it was "revealed by subsequently discovered information" that KPMG's 1997 audit report contained a material misrepresentation. Wafra claims that while KPMG did not know of any material misrepresentations contained in KPMG's 1997 audit opinion at the time it issued that report in March 1998, KPMG became aware that its 1997 audit opinion contained material misrepresentations at some time between September 1998 and May 4, 1999. Wafra further claims that KPMG failed to correct that alleged material misrepresentation in its audit report within a reasonable time after acquiring such knowledge.

## **Elements**

To find KPMG liable for securities fraud under the “duty to correct” theory, you must find that Wafra has proven by the preponderance of the evidence each and every of the following elements:

1. That KPMG’s 1997 audit opinion contained material misrepresentations;
2. That KPMG was not acting fraudulently or recklessly at the time when it originally prepared and submitted its 1997 audit report;
3. That sometime between September 1998 and May 4, 1999, KPMG became aware that KPMG’s 1997 audit opinion contained material misrepresentations; and
4. That KPMG failed to correct the material misrepresentations contained in its 1997 audit opinion within a reasonable time thereafter.
5. That KPMG acted with *scienter*.
6. That Wafra reasonably relied on the allegedly false representations in KPMG’s 1997 audit opinion when it made its investment in May 1999;
7. That Wafra incurred damages as a result; and
8. That the alleged misrepresentation by KPMG was the proximate cause of injury to Wafra.

I will now define certain terms that you are to use in your determination if Wafra has met its burden of proving that KPMG committed securities fraud.

### **Materiality**

For Wafra to prevail on its securities fraud claim based on a duty to correct theory against KPMG LLP, Wafra must also prove by a preponderance of the evidence that the alleged misrepresentation made by KPMG was “material.”

A representation is “material” if there is a substantial likelihood that a reasonable investor would consider the fact to be significant or important in making the investment decision, in light of all other information available. Materiality is determined as of the time of the alleged misrepresentation, not as of the date of Wafra’s investment in the securitization transaction.

The auditor’s concept of materiality is a matter of professional judgment and reasonable auditors may disagree about it.

Predictions and forward-looking statements are not material unless they are worded as guarantees.



### **Definition of Duty to Correct**

A statement needs to be “corrected” only if it was incorrect when made and if not corrected, it would render the earlier audit opinion, taken as a whole, materially misleading. KPMG was under no legal duty to correct an earlier statement unless and until it later discovered information revealing that its earlier statement was “incorrect” regarding a material matter.

### **Duty to Correct Within Reasonable Time**

If you find that KPMG learned between September 1998 and May 4, 1999 of information that its prior representations were materially incorrect when made, then you must determine when KPMG should have corrected its 1997 audit opinion. You are instructed that if KPMG had a duty to correct, it would have to correct its earlier statement within a reasonable period of time after learning that its earlier representations were not correct.

You should take into consideration the particular facts and circumstances surrounding the earlier statement and the newly-discovered information. You should also take into consideration any Generally Accepted Auditing Standards that address the procedures, adequacy, materiality, or timing for any such corrections.

Wafra claims that KPMG had a duty to correct its 1997 audit opinion before May 4, 1999 – the date on which Wafra made its investment.

If you find that KPMG became aware that its 1997 audit opinion contained material misrepresentations between September 1998 and May 4, 1999, but you find that a reasonable time for KPMG to correct its 1997 audit opinion could have been after May 4, 1999, then Wafra has failed to prove its claim against KPMG for securities fraud.

### **Scienter**

Plaintiffs alleging securities fraud causes of action must show “scienter” on the part of the defendant. Scienter is either “the intent to deceive, manipulate or defraud” or the “reckless disregard of the truth”. The “intent to deceive” form of scienter does not apply to the claim against KPMG because Wafra’s allegation is that KPMG “recklessly” failed to correct its 1997 audit opinion. Reckless conduct is highly unreasonable conduct that represents an extreme departure from standards of ordinary care. Wafra must prove that KPMG’s alleged failure to correct its 1997 audit opinion resulted from an egregious refusal to see the obvious, or to investigate the doubtful, or that no reasonable accountant would have made the same decisions if confronted with the same facts.

### **Reasonable Reliance**

In determining whether Wafra reasonably relied on the allegedly false statements in KPMG's 1997 audit opinion, you may consider the following factors in deciding reasonable reliance:

1. Wafra's sophistication and experience in financial and securities matters.
2. Whether Wafra ignored or refused to investigate the circumstances surrounding the transaction.
3. Whether Wafra disregarded known risks or risks so obvious that they should have been known, or so great as to make it highly probable that harm would follow.
4. Whether Wafra had access to relevant information that would have allowed it to uncover the alleged fraud.
5. Whether Wafra initiated or expedited the transaction.
6. Whether KPMG concealed the alleged fraud and the generality or specificity of the representation.
7. Whether the disclosures or materials contained adequate disclaimers describing the limitations or the scope of the auditor's engagement or involvement.

No single factor is determinative. All the relevant factors should be considered in determining whether the plaintiff's reliance was reasonable.

### **Causation**

To prevail on its securities fraud claim against KPMG, Wafra also must prove by a preponderance of the evidence that the alleged misrepresentation by KPMG was the proximate cause of injury to Wafra.

As to proximate causation, you are instructed that Wafra is not required to show that the alleged misrepresentation was the only cause of the alleged damages incurred by it, but must show by a preponderance of the evidence that the misrepresentation played a substantial part in bringing about or actually causing the alleged damage.

Causation has two distinct elements, “transaction causation” and “loss causation.” Both elements must be proved in order for Wafra to sustain its burden of proof on its securities fraud claim based on a duty to correct theory against KPMG.

### **Transaction Causation**

Transaction causation, the first element of causation, requires Wafra to prove by a preponderance of the evidence that the alleged material misrepresentations by KPMG were a substantial contributing factor in Wafra's decision to enter into the transaction.

### **Loss Causation**

Loss causation, the second element of causation, requires Wafra to prove by a preponderance of the evidence not only that KPMG's alleged misrepresentation was a substantial contributing factor in Wafra's decision to enter into the transaction, but also that KPMG's alleged misrepresentation was the cause of Wafra's alleged losses, because the subject matter of the alleged statement led to a decline in the value of Wafra's investment.

### **Proof of Each and Every Element**

In order to return a verdict in favor of Wafra on its securities fraud claim against KPMG based on the “duty to correct” theory, Wafra must prove by a preponderance of the evidence each and every element of its claim. If you find in favor of Wafra on its securities fraud claim against KPMG, then you must next consider the affirmative defense based on the Statute of Limitations asserted by KPMG and the other Defendants.

If any element is not proven, then you must return a verdict for KPMG.



## **Statute of Limitations**

If you find that Wafra has proved by a preponderance of the evidence each of the elements of securities fraud against KPMG, you must then consider whether any such claim is barred by the Statute of Limitations.

KPMG asserts that Wafra's securities fraud claim was brought too late and thus is barred by the Statute of Limitations. A Statute of Limitations is part of the law requiring that a lawsuit be brought within a set period of time. Otherwise, the suit is barred or precluded.

The Statute of Limitations for Wafra's securities fraud claim against KPMG is one year after Wafra was put on "inquiry notice" – that is, one year after Wafra became aware of facts that would have led a reasonable person to investigate whether he or she might have a claim. Because Wafra commenced its lawsuit on June 8, 2001, the issue for you to decide is whether Wafra was on inquiry notice on or before June 8, 2000.

Whether Wafra had inquiry notice of the securities law claim depends not only on what Wafra knew, but rather on whether Wafra should have known that its legal rights may have been violated more than one year before it filed its lawsuit. In deciding this issue, you must determine whether there existed suspicious circumstances and knowledge of, or ready access to obtain knowledge of, the essential facts that Wafra would need in order to determine whether its legal rights had been violated.

KPMG must prove that Wafra had inquiry notice on or before June 8, 2000 by a preponderance of the evidence.

If you find that KPMG has proven that, at any time before June 8, 2000, Wafra knew or should have known of suspicious circumstances and had ready access to obtain

knowledge of the essential facts it would need to determine if it had a claim for securities fraud against KPMG, then you must find that Wafra's claim is barred by the Statute of Limitations.

### **Measure of Damages**

I will now instruct you on the proper measure of damages for a securities fraud claim.

Only actual damages are recoverable under the Securities Exchange Act. The measure of damages is out-of-pocket losses. In this case, that means that if you find in favor of Wafra on any of its securities law claims, you should award Wafra the difference between the amount it invested and the amount it has received from that investment.

### **Misappropriation, Theft and Kiting**

Claims of “misappropriation,” “theft,” and “kiting” are not at issue in this case.

**May 4, 1999 Agreed Upon Procedures Letter**

References have been made during the trial to the May 4, 1999 Agreed Upon Procedures Letter prepared by KPMG in connection with the 1999-A securitization. You are instructed that this letter is not directed to Wafra and is not and cannot be the basis for any claim against KPMG in this case.

### **Selection of Foreperson - Verdict**

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in Court.

Forms of verdict have been prepared for you.

[Read the forms of verdict.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

#### **Question 4**

In determining whether any of the persons or entities listed in Question 4 violated the securities laws, you are instructed that such a violation occurs if such persons or entities made an untrue statement of material fact, or omitted to state a material fact necessary to make the statement not misleading. You must also find (1) that the person or entity made the material misstatement or omission intentionally or recklessly, (2) that Wafra reasonably relied on the misstatement or omission when it made its investment in May 1999, (3) that Wafra incurred damages as a result, and (4) that the alleged misrepresentation or omission proximately caused injury to Wafra, as these terms have been defined in these instructions.

### **Question 5**

In determining the percentage of responsibility for the persons and entities in Question 5, you should consider:

- i. the nature of the conduct of each person or entity found in Question 4 to have caused or contributed to the loss incurred by Wafra; and
- ii. the nature and extent of the causal relationship between the conduct of each such person or entity and the damages incurred by Wafra.



### **Communication with Court**

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

### **Disagreement Among Jurors**

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning an unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
NORTHERN DIVISION

WAFRA LEASING CORPORATION 1999-A-1,	)	
	)	
Plaintiff,	)	
	)	No. 01 C 4314
v.	)	
	)	Judge St. Eve
KPMG LLP,	)	
	)	
Defendant.	)	

**SPECIAL INTERROGATORIES AND VERDICT FORM**

1. Answer the following questions:

- a. Did Wafra prove that KPMG's 1997 audit opinion contained one or more material misrepresentations?

Answer Yes or No \_\_\_\_\_

- b. Did Wafra prove that KPMG discovered sometime between September 1998 and May 4, 1999 that KPMG's 1997 audit opinion contained one or more material misrepresentations?

Answer Yes or No \_\_\_\_\_

- c. Did Wafra prove that KPMG failed to correct one or more material misrepresentations, if there were any contained in its 1997 audit opinion, within a reasonable time?

Answer Yes or No \_\_\_\_\_

- d. Did Wafra prove that KPMG acted with scienter?

**Answer Yes or No** \_\_\_\_\_

- e. Did Wafra prove that it reasonably relied on one or more material misrepresentations, if there were any in KPMG's 1997 audit opinion, when it made its investment in May 1999?

**Answer Yes or No** \_\_\_\_\_

- f. Did Wafra prove that it suffered damages as a result of KPMG's conduct?

**Answer Yes or No** \_\_\_\_\_

- g. Did Wafra prove that KPMG was the proximate cause of injury to Wafra?

**Answer Yes or No** \_\_\_\_\_

**If you answered "YES" to all of the questions in Interrogatory 1, then you must answer Interrogatory 2, below. If you answered "NO" to any of the questions above, then you should not answer the remaining questions and your verdict for KPMG will be entered by signing the signature page on page 5.**

2. Did KPMG prove that Wafra's claim against KPMG is barred by the Statute of Limitations?

**Answer Yes or No** \_\_\_\_\_

**If you answered "NO" to Interrogatory 2 above, then you must answer Interrogatories 3 through 5, below. If you answered "YES" to Interrogatory 2 above, then you should not answer the remaining questions and your verdict for KPMG will be entered by signing the signature page on page 5.**

3. What is the total amount of damages that Wafra incurred?

\$ \_\_\_\_\_

4. As to each of the following persons or entities, state whether he or it violated securities laws in connection with Wafra's investment in the 1999-A securitization:

Bankers Trust **Answer Yes or No** \_\_\_\_\_

Friedman, James **Answer Yes or No** \_\_\_\_\_

KPMG **Answer Yes or No** \_\_\_\_\_

Landeck, Vern **Answer Yes or No** \_\_\_\_\_

Prime Capital Corporation/  
Prime Leasing Corporation **Answer Yes or No** \_\_\_\_\_

5. If you answered “YES” as to any of the persons or entities in Question 4, state the percentage of responsibility of each such person or entity:

Bankers Trust \_\_\_\_\_ %

Friedman, James \_\_\_\_\_ %

KPMG \_\_\_\_\_ %

Landeck, Vern \_\_\_\_\_ %

Prime Capital Corporation/  
Prime Leasing Corporation \_\_\_\_\_ %

**The total must add up to 100%**

6. If you answered “YES” as to any of the persons or entities in Question 4, state whether such person or entity knowingly committed a violation of the securities laws:

Bankers Trust **Answer Yes or No** \_\_\_\_\_

Friedman, James **Answer Yes or No** \_\_\_\_\_

KPMG **Answer Yes or No** \_\_\_\_\_

Landeck, Vern **Answer Yes or No** \_\_\_\_\_

Prime Capital Corporation/  
Prime Leasing Corporation **Answer Yes or No** \_\_\_\_\_

For purposes of question 6, a person commits a “knowing violation of the securities laws” if that person engages in conduct with actual knowledge of the facts and circumstances that make that conduct a violation of the securities laws. With respect to an action that is based on an untrue statement of material fact or omission of a material fact necessary to make the statement not misleading, a “knowing violation of the securities laws” is committed if (1) that person makes an untrue statement of a material fact, with actual knowledge that the representation is false, or omits to state a fact necessary in order to make the statement made not misleading, with actual knowledge that, as a result of the omission, one of the material representations of the person is false; and (2) persons are likely to reasonably rely on that misrepresentation or omission.

Reckless conduct alone does not amount to a “knowing violation of the securities laws.”

SO SAY WE ALL.

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

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Juror

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Juror

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Juror